

REMARKS

By the present amendment, Applicant has amended Claims 1, 5, 6, 9, 12, 14-16, 19 and 20. Claims 1-20 remain pending in the present application. Claims 1, 6 and 15 are independent claims.

In the recent Office Action the Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. The Examiner further noted that the term "said actuator cap lid" recited in Claim 19 lacked sufficient antecedent support. In light of these criticisms, Applicant has amended the respective claims to more particularly define the subject matter in question and to provide express antecedent basis for the claim language. Specifically, each occurrence of the originally recited term "main body" in the claims has been changed to read -actuator cap-. Applicant respectfully submits that terminology of the amended claims follow the nomenclature from the descriptive portion of the original specification. Further, the dependency of Claim 19 has been changed to now depend from Claim -18- to provide proper antecedent basis for the term in question.

The Examiner rejected Claims 1, 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Carter et al. (U.S. Patent No. 6,382,469) in view of Lacoste (U.S. Patent No. 5,882,042) or Trachtenberg (U.S. Patent No. 6,446,453). Claims 2, 3, 6-8, 10-15 and 17-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carter et al. in view of Lacoste or Trachtenberg, and further in view of Goncalves (U.S. Patent No. 4,513,890) or Gross (U.S. Patent No. 6,269,986). Claims 9 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Carter et al. in view of Lacoste or Trachtenberg.

With regard to the grounds of rejection based on prior art, Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The primary reference to Carter et al. (U.S. 6,382,469) discloses an actuator for dispensing the pressurized contents of a container through an upstanding valve stem having a discharge end. The actuator has a generally cylindrical body having a central aperture therethrough for receiving the upstanding valve stem therein when the actuator is attached to the container. The similarities between the present invention and the Carter et al. reference end here. The '469 patent does not disclose a threaded connection between the discharge tube and the actuator. The reliance upon the applied secondary references to Lacoste and Trachtenberg do not provide any suitable teaching that would have taught one skilled in the art to arrive at Applicant's invention. Specifically, the teachings of the applied Lacoste reference are for a connector body that is capable of passing over an elbow bend in a freon line. As it is contemplated that the Applicant's invention could be used with a flexible refrigerant hose, such an idea as is shown in the Lacoste reference would not be relevant. The Trachtenberg reference is relied upon to show a kit utilizing a unitary hose connector for automobile air conditioner servicing, and as such does not provide an adequate solution to the problem of discharging harmful refrigerant in to the atmosphere as disclosed by Applicant.

Further, the combined teachings afforded by Carter et al. and Lacoste/Trachtenberg fail to suggest a hinged lid as is disclosed and claimed by Applicant. The reliance upon the Goncalves or Gross references do not provide suitable teaching that would have taught one skilled in the art to arrive at the Applicant's invention. Specifically, the teachings of the applied Gross reference demonstrate a hinged lid

that prevents the lid of an aerosol can to be tampered with. The present invention does not claim a lid that would show if it has been opened. The typical way to determine if a bottle of refrigerant has been tampered with is by weighing it, as such the Gross reference would not apply to Applicant's invention. Similarly, the Goncalves reference shows a tamper-proof cover that also has presentation value. The Goncalves reference does not disclose a hinged cap but rather a cap that would replace conventional push buttons for aerosol cans. The hinged lid of the Applicant's invention is meant to act as a safety cap that does not replace the push button.

With regard to the rejection of Claims 9 and 16 as being unpatentable over Carter et al. in view of Lacoste or Trachtenberg, the Examiner asserts that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrally mount hose of the apparatus of Carter et al. and Lacoste/Trachtenberg, on the actuator thereof, since it has been held to be within the general skill of a worker in the art to make plural parts unitary as a matter of obvious engineering choice." While the Carter et al. reference has an integrated discharge port and discharge tube assembly, it would not be obvious to combine the teachings of Lacoste/Trachtenberg with the Carter et al. reference. Applicant's invention specifically refers to refrigeration bottles. The discharge piping must be used with the exact same type of refrigerant or it could cause potential damage to a system being charged. For certain applications it is an important feature that the discharge piping be attached to the actuator. The Lacoste/Trachtenberg references teach systems that are exclusively meant to connect to various separate cooling systems and refrigerant bottles.

Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

Applicant contends that one skilled in the art would not be motivated to combine the references in the manner suggested by the Examiner. Applicant further contends that even if the references were properly combinable, the above noted deficiencies of the primary reference to Carter et al. are not remedied by the teachings afforded by the secondary references. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of features that forms the basis of the instant

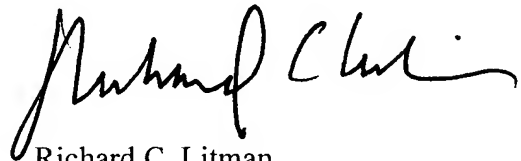
Application No. : 10/665,213
Art Unit : 3744

Attorney Docket No. 22461.00
Confirmation No. 5730

claims.. For at least these reasons, Applicant respectfully submits that independent Claims 1, 6 and 15, as amended, and corresponding dependent Claims 2-5, 7-14 and 16-20 are allowable over the prior art of record.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



Richard C. Litman

Registration No. 30,868

(703) 486-1000

RCL:gwh

Attachment